



COMMONWEALTH of VIRGINIA

Department of Health

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Memorandum

DATE: February 22, 2006

TO: Home Care Applicant

FROM: Frederick W. Kyle, Supervisor
Division of Acute Care Services

SUBJECT: Home Care Advisory – Surety Bond Requirement

This is written to provide clarification regarding surety bond requirements for licensed home care organizations in Virginia. The purpose of this letter is to focus on the application of state law; compliance with federal certification is another matter.

The Medicare surety bond requirement in the Code of Federal register: CFR 42 Part 489.66 applies only to a home health agency that is certified or applies to participate as a provider of home health services. The Centers for Medicare and Medicaid Services (CMS), through this requirement, is seeking protection for unpaid claims, unpaid civil money penalties and unpaid assessments that are discovered when the surety bond is effect.

In contrast, the intent of the bond coverage required in the **Code of Virginia**, §32.1-162.11 is to compensate patients or individuals for injuries and losses resulting from negligent or criminal acts of home care organizations.

Home care applicants may contact any carriers licensed to do business in Virginia to obtain the appropriate bond. It is recommended that home care organizations request an insurer authorized to write a bond with endorsements that will compensate patients or individuals for injuries and losses resulting from negligent or criminal acts of any home care organization employee and contractor.

A Home Care Advisory is enclosed. I hope this information will facilitate a better understanding of the **Code of Virginia** surety bond requirements for licensed home care organizations in Virginia.

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Virginia Department of Health
Center for Quality Care Services and Consumer Protection

Home Care Advisory
Surety Bond Requirements

Section 32.1 - 162.11 of the **Code of Virginia** requires the Board of Health to "establish *liability insurance and surety bond* requirements adequate to compensate patients or individuals for injuries and losses resulting from negligent or criminal acts of home care organizations." Every licensee shall maintain in force such liability insurance and surety bond as the Board establishes.

The Virginia Department of Health will accept a bond with proper endorsement attached to cover home care employees and contractors who perform duties or services at the patient's home which would cover losses to the patients' property and injuries or losses resulting from negligent or criminal acts of the home care organization employees.

The Center's Medical Facilities Inspector will ask the home care organization to provide evidence of coverage during the initial and annual onsite licensure inspection. The home care organization is required to maintain documentation of insurance and bond coverage.

The **Code** provides for fidelity and surety insurance. The "fidelity and surety insurer" means any company licensed to transit fidelity or surety insurance in this Commonwealth, and includes any company elsewhere designated or referred to [the **Code**] as a guaranty, indemnity, fidelity, surety or security company. (See §38.2-2401 of the **Code**.) The State Corporation Commission's Bureau of Insurance is responsible for licensing insurers, including fidelity and surety insurers, in Virginia. You may contact any insurance bond carrier licensed to do business in Virginia.

Neither this Center nor the Bureau of Insurance provides a bond form.

Home care organizations contract any/or employ persons to perform services to the frail in their homes. The Center, as mandated by the **Code**, is looking for the individual bond against each service performer's actions towards a patient in the patient's home.

To the extent that a home care organization requires its contractors to be bonded, then contractors will have a vested interest in their employees' conduct. The actual indemnification arrangement may vary, depending upon the relationship of the home care organization to the persons performing services in the homes. The home care organization could conceivably pay the bonds for each of its contractors. This could be done as part of the home care organization's contract with its contractors. The home care organization could have the contractors purchase the bond in order to demonstrate it is a responsible contractor. Bond purchased by the home care organization gives the organization an interest in the performance of its contractors. Bonds purchased by the contractor give the contractor some personal obligation to perform correctly or the contractor's premium may increase.